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## Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Department of Medical Assistance Services
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 30-80-75
<b>Regulation title</b>	Methods and Standards for Establishing Payment Rates: Other Types of Providers.
<b>Action title</b>	Change reimbursement for school divisions from state-wide fee-for-service rates to a cost settlement process.
<b>Document preparation date</b>	August 18, 2006

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://www.townhall.state.va.us/dpbpages/dpb_apa.htm)), Executive Orders 21 (2002) and 58 (1999) ([www.governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html)), and the *Virginia Register Form, Style, and Procedure Manual* ([http://legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### Preamble

*The APA (Section 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.*

- 1) Please explain why this is an “emergency situation” as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

The Administrative Process Act (Section 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a

regulation to take effect no later than 280 days from its effective date. This emergency regulation meets the standard at *COV 2.2-4011(ii)* as discussed below.

Item 302.NN of the 2006 Appropriations Act directs the Department of Medical Assistance Services (DMAS) to take these regulatory actions and provides emergency regulatory authority.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

This regulatory action is intended to implement reimbursement changes authorized by the 2006 Appropriation Act. Item 302.NN of the 2006 Appropriation Act changes the methodology for determining reimbursement for special education health services furnished by school division providers. Reimbursement changes were mandated by the Centers for Medicare and Medicaid Services (CMS). CMS is requiring all states to implement cost-based reimbursement effective with the 2006-2007 school year. If DMAS declines to implement this federal mandate, CMS would not provide the federal funding it currently provides to Virginia for 50% of the costs for covered school health services. Without that funding stream Virginia school divisions would be severely hampered in obtaining sufficient resources to maintain school health services, especially for disabled students. This would have an obvious impact on the health and welfare of school age children in the Commonwealth.

### Legal basis

*Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

Item 302.NN of the 2006 Appropriation Act Item directs the agency to implement these changes and provides emergency regulatory authority.

**Substance**

*Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.*

The sections of the State Plan for Medical Assistance that is affected by this change is the Fee-For Service Providers, Local Health Services, Including Services Paid to Local Schools (12VAC 30-80-30-A:7).

12VAC30-80-30-A.:7 will be replaced by a new section 12VAC30-80-75. School divisions will no longer be reimbursed by a statewide fee schedule. Payment for each school year is based on actual cost as determined by completed and certified cost reports (approved by CMS) and a desk audit. Cost is limited to the amount of medical services and special transportation costs allocated to Medicaid, Medicaid Expansion and FAMIS special education recipients.

DMAS will pay each school division an interim rate for services provided. Final reimbursement will be based on each individual school division’s cost as determined through annual cost reports. One cost report will be used for all medical services and a separate cost report will be used for special transportation.

Reimbursement changes were mandated by the Centers for Medicare and Medicaid Services (CMS). CMS is requiring all states to implement cost-based reimbursement effective with the 2006-2007 school year.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC30-80-30-A.:7		Reimbursement is based on a statewide fee schedule. Claims payment is final payment. Fee schedule is not directly related to cost of providing services based on those costs.	Delete.
	12VAC30-80-75		Reimbursement is based on each individual school division’s cost as determined through annual cost reports. Reimbursable costs are determined by the percentage of total medical services cost and special education transportation cost being provided to Medicaid, Medicaid Expansion, and FAMIS students.

### Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.*

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This regulatory action is based on specific mandates expressed in the 2006 Appropriation Act; therefore, no alternatives were considered.

### Family impact

*Please assess the impact of the emergency regulatory action on the institution of the family and family stability.*

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These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents. It does not strengthen or erode the marital commitment.